

AMENDED IN SENATE MARCH 6, 2006

SENATE BILL

No. 1119

Introduced by Senator Migden

January 4, 2006

An act to ~~add Section 4801.5 to the Penal Code~~ *amend Sections 68665 and 68666 of, and to add Section 68667 to, the Government Code, and to amend Sections 4801, 4802, 4803, and 5075.1 of, the Penal Code*, relating to reprieves, pardons and commutations of sentence.

LEGISLATIVE COUNSEL'S DIGEST

SB 1119, as amended, Migden. Reprieves, pardons and commutations of sentence.

Existing law provides that the Governor has the discretion whether to grant or deny reprieves, pardons and commutations of sentence.

~~This bill would provide that criteria to guide the Governor in deciding whether to grant or deny reprieves, pardons and commutations of sentence shall be developed.~~

Existing law further provides that the Judicial Council and Supreme Court shall adopt mandatory and binding competence standards for the appointment of counsel in death penalty direct appeals and habeas corpus proceedings.

This bill would also provide that the Judicial Counsel and Supreme Court shall adopt competency standards for appointed counsel for clemency proceedings.

Existing law provides that the Supreme Court may compensate appointed counsel in automatic appeals arising out of a judgment of death or other postconviction proceedings at the rate specified.

This bill would also provide that the Supreme Court may compensate appointed counsel during clemency proceedings at the rate specified.

This bill would further provide that the Supreme Court shall appoint counsel to represent indigent defendants sentenced to death in clemency proceedings. The bill would also provide that if the superior court has set a public session to set a date for execution of judgment of death, and clemency counsel has not been appointed, as specified, the Supreme Court, or any other court, must enter an order staying the public execution date.

Existing law provides that when a pardon or clemency is applied for to the Governor or the Board of Parole Hearings, the Governor or the Board of Parole Hearings may direct the trial judge or the district attorney who prosecuted the case to furnish him or it, without delay, a summarized statement of the facts of the case.

This bill would require the Governor or the Board of Parole Hearings to provide the summarized statement of facts to the inmate filing for relief as well as the district attorney of the county in which the offense was committed. This bill would also provide that any material received by the Governor or the Board of Parole Hearings in clemency cases shall be furnished without delay to inmate applying for relief and the district attorney of the county in which the offense was committed.

Existing law does not specifically address the jurisdiction of the Supreme Court to issue subpoenas and any tangible item for any hearing before the Governor or the Board of Parole Hearings on the issue of reprieves, pardons and commutations.

This bill would provide that the Supreme Court issue subpoenas and any tangible item for any hearing before the Governor or the Board of Parole Hearings on the issue of reprieves, pardons and commutations as specified.

Existing law specifies the duties of the Board of Parole Hearings.

This bill would, in addition, provide that upon written request of an inmate sentenced to death the Board of Parole Hearings shall hold a clemency hearing and forward its recommendation to the Governor.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 68665 of the Government Code is*
2 *amended to read:*

3 68665. The Judicial Council and the Supreme Court shall
4 adopt, by rule of court, binding and mandatory competency
5 standards for the appointment of counsel in death penalty direct
6 appeals and habeas corpus, *and clemency proceedings.*

7 *SEC. 2. Section 68666 of the Government Code is amended to*
8 *read:*

9 68666. (a) The Supreme Court may compensate counsel
10 representing indigent defendants in automatic appeals arising out
11 of a judgment of death ~~or for~~, state postconviction proceedings,
12 *or clemency proceedings* in those cases, at a rate of at least one
13 hundred twenty-five dollars (\$125) per allowable hour, as
14 defined by the court's Payment Guidelines for Appointed
15 Counsel Representing Indigent Criminal Appellants. However,
16 nothing in this section is intended to prohibit the hiring of
17 counsel under a flat-fee arrangement.

18 (b) The Supreme Court may raise the guideline limitation on
19 investigative and other expenses allowable for counsel to
20 adequately investigate and present collateral claims to up to
21 twenty-five thousand dollars (\$25,000) without an order to show
22 cause.

23 ~~(c) It is the intent of the Legislature that payments to~~
24 ~~appointed counsel be made within 60 days of submission of a~~
25 ~~billing. The Supreme Court shall set the guideline limitation on~~
26 ~~investigative and other expenses allowable for counsel to~~
27 ~~adequately investigate and present clemency petitions.~~

28 ~~(e) It is the intent of the Legislature that payments to~~
29 ~~appointed counsel be made within 60 days of submission of a~~
30 ~~billing.~~

31 *SEC. 3. Section 68667 is added to the Government Code, to*
32 *read:*

33 68667. The Supreme Court shall appoint counsel to represent
34 indigent defendants sentenced to death in clemency proceedings
35 in accordance with the competency standards established as a
36 result of Section 68665 of the Government Code. In any case in
37 which a superior court has set a public session to set a date for
38 execution of judgment of death under Section 1193 or 1227 of the

1 *Penal Code and clemency counsel has not been appointed at*
2 *least ninety (90) days prior to the public session, the Supreme*
3 *Court or any other court shall enter an order staying the public*
4 *session and execution date.*

5 *SEC. 4. Section 4801 of the Penal Code is amended to read:*

6 4801. (a) The Board of ~~Prison Terms~~ *Parole Hearings* may
7 report to the Governor, from time to time, the names of any and
8 all persons imprisoned in any state prison who, in its judgment,
9 ought to have a commutation of sentence or be pardoned and set
10 at liberty on account of good conduct, or unusual term of
11 sentence, or any other cause, including evidence of intimate
12 partner battering and its effects. For purposes of this section,
13 “intimate partner battering and its effects” may include evidence
14 of the nature and effects of physical, emotional, or mental abuse
15 upon the beliefs, perceptions, or behavior of victims of domestic
16 violence where it appears the criminal behavior was the result of
17 that victimization.

18 (b) The Board of ~~Prison Terms~~ *Parole Hearings*, in reviewing
19 a prisoner’s suitability for parole pursuant to Section 3041.5,
20 shall consider any information or evidence that, at the time of the
21 commission of the crime, the prisoner had experienced intimate
22 partner battering, but was convicted of the offense prior to the
23 enactment of Section 1107 of the Evidence Code by Chapter 812
24 of the Statutes of 1991. The board shall state on the record the
25 information or evidence that it considered pursuant to this
26 subdivision, and the reasons for the parole decision. The board
27 shall annually report to the Legislature and the Governor on the
28 cases the board considered pursuant to this subdivision during the
29 previous year, including the board’s decision and the findings of
30 its investigations of these cases.

31 *SEC. 5. Section 4802 of the Penal Code is amended to read:*

32 4802. In the case of a person twice convicted of felony, the
33 application for pardon or commutation of sentence shall be made
34 directly to the Governor, who shall transmit all papers and
35 documents relied upon in support of and in opposition to the
36 application to the Board of ~~Prison Terms~~ *Parole Hearings*.

37 *SEC. 6. Section 4803 of the Penal Code is amended to read:*

38 4803. (a) When an application is made to the Governor for
39 pardon or commutation of sentence, or when an application has
40 been referred to the Board of ~~Prison Terms~~ *Parole Hearings*, he

1 or it may require the judge of the court before which the
2 conviction was had, or the district attorney by whom the action
3 was prosecuted, to furnish him or it, without delay, with a
4 summarized statement of the facts proved on the trial, and of any
5 other facts having reference to the propriety of granting or
6 refusing said application, together with his recommendation for
7 or against the granting of the same and his reason for such
8 recommendation.

9 *(b) Any material received by the Governor or the Board of*
10 *Parole Hearings pursuant to subdivision (b) of this section shall*
11 *be furnished without delay to the inmate applying for relief and*
12 *the district attorney of the county in which the offense was*
13 *committed.*

14 *(c) The Supreme Court shall have jurisdiction to issue*
15 *subpoenas to compel attendance of witnesses and any tangible*
16 *item for any hearing before the Governor or the Board of Parole*
17 *Hearings on the issue reprieves, pardons and commutations. The*
18 *subpoenas shall issue on application of the inmate applying for*
19 *relief or the district attorney of the county in which the offense*
20 *was committed.*

21 *SEC. 7. Section 5075.1 of the Penal Code is amended to*
22 *read:*

23 5075.1. The Board of Parole Hearings shall do all of the
24 following:

25 (a) Conduct parole consideration hearings, parole rescission
26 hearings, and parole progress hearings for adults and juveniles
27 under the jurisdiction of the department.

28 (b) Conduct mentally disordered offender hearings.

29 (c) Conduct sexually violent predator hearings.

30 *(d) Conduct clemency hearings whenever an inmate sentenced*
31 *to death submits a written request for a hearing, and forward its*
32 *recommendation on the request to the Governor.*

33 (e) Review inmates' requests for reconsideration of denial of
34 good-time credit and setting of parole length or conditions,
35 pursuant to Section 5077.

36 ~~(e)~~

37 (f) Determine revocation of parole for adult offenders under
38 the jurisdiction of the Division of Adult Parole Operations,
39 pursuant to Section 5077.

40 ~~(f)~~

1 (g) Carry out the functions described in Section 1719 of the
2 Welfare and Institutions Code, and make every order granting
3 and revoking parole and issuing final discharges to any person
4 under the jurisdiction of the Department of Corrections and
5 Rehabilitation.

6 ~~(g)~~

7 (h) Conduct studies pursuant to Section 3150 of the Welfare
8 and Institutions Code.

9 ~~(h)~~

10 (i) Investigate and report on all applications for reprieves,
11 pardons, and commutation of sentence, as provided in Title 6
12 (commencing with Section 4800) of Part 3.

13 ~~(i)~~

14 (j) Exercise other powers and duties as prescribed by law.

15 ~~(j)~~

16 (k) Effective January 1, 2007, all commissioners appointed
17 and trained to hear juvenile parole matters, together with their
18 duties prescribed by law as functions of the Board of Parole
19 Hearings concerning wards under the jurisdiction of the
20 Department of Corrections and Rehabilitation, are transferred to
21 the Chief Deputy Secretary for Juvenile Justice. All applicable
22 regulations in effect at the time of transfer shall be deemed to
23 apply to those commissioners until new regulations are adopted.

24 ~~SECTION 1. Section 4801.5 is added to the Penal Code, to~~
25 ~~read:~~

26 ~~4801.5. Criteria to guide the Governor in deciding whether to~~
27 ~~grant or deny reprieves, pardons and commutations shall be~~
28 ~~developed.~~